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4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 SEATTLE TIMES COMPANY,

8 Plaintiff,

9 v.

10 LEATHERCARE, INC.; STEVEN RITT;
11 and the marital community composed of
12 STEVEN RITT and LAURIE ROSEN-
13 RITT,

14 Defendants/Third-Party
15 Plaintiffs,

16 v.

17 TOUCHSTONE SLU LLC; and
18 TB TS/RELP LLC,

19 Third-Party Defendants.

C15-1901 TSZ

MINUTE ORDER

16 The following Minute Order is made by direction of the Court, the Honorable
17 Thomas S. Zilly, United States District Judge:

18 (1) The motion for clarification, docket no. 274, brought by third-party
19 defendants Touchstone SLU LLC and TB TS/RELP LLC (collectively, “Touchstone”), is
20 treated as a timely motion, made pursuant to Federal Rule of Civil Procedure 52(b), to
21 amend the Court’s findings of fact and conclusions of law, docket no. 270, and it is
22 DENIED. Touchstone challenges the following language in the Court’s Order entered
23 August 15, 2018: “Because Seattle Times has already paid Touchstone more than what it
has been determined to owe after allocation under MTCA [Washington’s Model Toxics
Control Act], Touchstone’s request for prejudgment interest is denied as moot.” Order at
118 n.77 (docket no. 270). Touchstone contends that this footnote lacks clarity as to

1 whether Touchstone is entitled to prejudgment interest from plaintiff Seattle Times
2 Company (“Seattle Times”) under the Environmental Remediation and Indemnity
3 Agreement (“ERIA”) between the parties. The footnote, however, is unequivocal that
4 Touchstone’s request for prejudgment interest is denied and, as acknowledged in its
5 Rule 52(b) motion, Touchstone sought prejudgment interest only under the ERIA, and
6 not pursuant to MTCA. The Court remains persuaded that Touchstone is not entitled to
7 prejudgment interest in connection with the amount awarded pursuant to the ERIA.
Under Washington law, which governs as to Touchstone’s contract claim, prejudgment
8 interest is permitted only when the amount claimed is “liquidated.” *See Hansen v.*
Rothaus, 107 Wn.2d 468, 472, 730 P.2d 662 (1986). A claim is “liquidated” when the
evidence furnishes data that, if believed, makes computation of the exact amount of
damages possible, without reliance on opinion or discretion. *Id.* (citing *Prier v.*
Refrigeration Eng’g Co., 74 Wn.2d 25, 32, 442 P.2d 621 (1968)). An “unliquidated”
claim is one that depends “upon the opinion or discretion of the judge or jury.” *Id.* at
473; *see also Car Wash Enters., Inc. v. Kampanos*, 74 Wn. App. 537, 549, 874 P.2d 868
(1994) (“if the factfinder must exercise discretion to determine the measure of damages,
the claim is unliquidated”). In *Kampanos*, the Washington Court of Appeals affirmed the
denial of prejudgment interest, explaining that, although the amount that the plaintiff
expended to clean up the contamination at issue was a sum certain, the defendant’s share
of those costs was not. 74 Wn. App. at 549. This case is in a similar posture. In
calculating the amount owed by Seattle Times to Touchstone under the ERIA, the Court
was required to devote 28 of the 55 pages (over 50%) of the discussion section of a
121-page order to the tasks of construing the contract, determining whether particular
expenses qualified as “incremental costs” and/or related to third-party claims, and
assessing whether various amounts claimed by Touchstone pursuant to its contract with
Seattle Times were supported by the law and the evidence. To suggest that the resulting
award to Touchstone was a “liquidated” amount simply ignores the many weeks of trial
in this matter and the several months of effort expended by the Court in crafting findings
of fact and conclusions of law.

16 (2) In its motion for attorney’s fees, docket no. 281, Touchstone has sought
both prejudgment interest and costs. The request for prejudgment interest is STRICKEN
17 as moot for the reasons set forth in Paragraph 1, above. By Order entered August 15,
2018, Touchstone was directed to tax costs in the manner set forth in Local Civil
18 Rule 54(d), which requires that a bill of costs be filed within twenty-one (21) days after
the entry of judgment. *See* Order at 119 (docket no. 270). The Court did not extend the
19 deadline for taxing costs. *See id.; see also* Minute Order at ¶ 2 (docket no. 273) (setting
a due date for only an attorney’s fees motion). Touchstone did not timely tax costs. The
Court will treat Touchstone’s pending motion as seeking an extension of time to file a
separate tax bill to be considered by the Clerk pursuant to Local Civil Rule 54(d). Any
21 response to such request for extension shall be incorporated into any response concerning
Touchstone’s motion for attorney’s fees.

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1 (3) The Clerk is directed to send a copy of this Minute Order to all counsel of
record and to the United States Court of Appeals for the Ninth Circuit.

2 Dated this 16th day of October, 2018.

3 _____
4 William M. McCool

5 Clerk
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8 _____
9 s/Karen Dews

10 Deputy Clerk
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